

## 46 Am. Jur. 2d Judges § 111

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### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

#### 3. Relationship as Grounds for Disqualification

##### a. Relationship to Parties or Persons Interested

## § 111. Relationship of judge to parties or persons interested as grounds for disqualification, generally

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### West's Key Number Digest

West's Key Number Digest, [Judges](#)  45

### A.L.R. Library

[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification](#), 10 A.L.R.2d 1307

[Disqualification of judge under 28 U.S.C.A. sec. 455\(b\)\(5\)\(iii\), where judge or his or her spouse, or certain of their relatives, is known to have an interest that could be affected by the proceeding](#), 54 A.L.R. Fed. 855

Under constitutional or statutory provisions in many jurisdictions, a judge is disqualified to act in any cause where the judge is related to one of the parties within certain specified degrees of consanguinity or affinity, which vary in the different jurisdictions.<sup>1</sup> The canons or rules of many states provide that a judge should disqualify him- or herself if the judge or his or her spouse, or a person within the third degree of relationship to either of them or the spouse of such a person, is a party to the proceeding or is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding,<sup>2</sup> and such rules are embodied in the federal statute regarding the disqualification of judges,<sup>3</sup> and in the Code of Judicial Conduct, which also makes provision for domestic partners.<sup>4</sup>

**Observation:**

While some relationships are per se bases for recusal of a judge, other relationships and contacts with parties and attorneys become disqualifying when those connections affect a reasonable observer's perception of fairness.<sup>5</sup>

Where the relationship between a judge and a party is within the prescribed limits, neither the frequency of contact nor the closeness of the individuals affects the result.<sup>6</sup> The fact that the trial judge does not know of his or her relationship to a party or the party's spouse, where such a relationship would disqualify the judge, does not prevent a disqualification.<sup>7</sup> A judge may become disqualified from taking further action in a case where one of his or her relatives becomes a party at some stage during the action.<sup>8</sup>

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**Footnotes**

- 1 [Lacy v. Lacy](#), 320 Ga. App. 739, 740 S.E.2d 695 (2013); [Brandon v. State](#), 108 So. 3d 999 (Miss. Ct. App. 2013); [Sherryland, Inc. v. Snuffer](#), 150 N.H. 262, 837 A.2d 316 (2003); [State v. American TV and Appliance of Madison, Inc.](#), 151 Wis. 2d 175, 443 N.W.2d 662 (1989).
- 2 [Alabama State Personnel Bd. v. Garner](#), 4 So. 3d 545 (Ala. Civ. App. 2008) (fourth degree of relationship); [Morton v. Benton Pub. Co., Inc.](#), 291 Ark. 620, 727 S.W.2d 824 (1987); [Los v. Los](#), 595 A.2d 381 (Del. 1991); [Buchanan v. Buchanan](#), 587 So. 2d 892 (Miss. 1991).
- 3 28 U.S.C.A. § 455(b)(5)(i), (iii).  
As to the interest of relatives under 28 U.S.C.A. § 455(b)(5), generally, see [Am. Jur. 2d, Federal Courts](#) §§ 101, 102.
- 4 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(a), (c).  
A chief municipal court judge was disqualified from presiding over any case in which his son, who was sworn in as a police officer in the same town in which the judge sat, or in any case in which the son's fellow officers or coworkers were involved, and was prohibited from having supervisory responsibilities over other municipal court judges, under the canon of the Code of Judicial Conduct and the analogous rule requiring recusal when a close relative of the judge is a party to the proceeding, is known by the judge to have an interest that could be affected by the outcome of the proceeding, or is likely to be a witness in the proceeding, even in cases where the son was not a party or witness in the proceeding in municipal court. [In re Advisory Letter No. 7-11 of Supreme Court Advisory Committee on Extrajudicial Activities](#), 213 N.J. 63, 61 A.3d 136 (2013).
- 5 [Taylor-Boren v. Isaac](#), 143 N.H. 261, 723 A.2d 577 (1998), as modified on other grounds on denial of reh'g, (Feb. 18, 1999).
- 6 [Morton v. Benton Pub. Co., Inc.](#), 291 Ark. 620, 727 S.W.2d 824 (1987).
- 7 [Fry v. Tucker](#), 146 Tex. 18, 202 S.W.2d 218 (1947).
- 8 [Bliss v. Tyler](#), 149 Mich. 601, 113 N.W. 317 (1907).

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